IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6201 OF 2004

Smt.Kashibai Waman Patil, since deceased through LRs. Petitioners

versus

Taukirahmed Mohammed Hanif Khan and others Respondents

Shri P.S.Dani for petitioners.

Shri S.G.Karandikar for respondent no.1.

Shri Nitin Muley for respondents 2A, 2B and 2E(1)

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners are challenging an order passed by the Additional Commissioner, Konkan Division, Mumbai on 17th July 2004 (Exhibit-F).

2. The submission of Shri Dani is that the Additional Commissioner was in obvious error in interfering in revisional jurisdiction with the

order passed by the appellate authority. He submits that the order of the Additional Commissioner can safely termed as perverse as well. He submits that the Deputy Collector (Appeals) and Sub Divisional Officer while being seized of dispute pertaining to certification of Mutation Entry No.6922 of Village Dahisar, have adverted to all factual materials and hence it was not open for the Additional Commissioner to have reappraised the same in the limited jurisdiction that he was exercising.

3. In any event, the Additional Commissioner should not have entertained the request of the concerned respondents herein when they fail to satisfy him that sufficient cause was made out for approaching the authorities. In other words, there was considerable delay and there being no application for condoning the same, the Commissioner should not have entertained the request and passed any orders on merits.

4. I have considered the submissions of Shri Dani. The Additional Commissioner, Konkan Division has referred to the fundamental aspect of the matter namely that the power that is conferred on the Tahsildar while certifying

Mutation Entries, does not permit him to reopen contentions issues or issues of title, if already concluded. In any event, he cannot entertain such disputes in his jurisdiction.

5. The Additional Commissioner has in the instant case referred to Mutation Entry No.420 which was a composite entry, showing the names of Deubai and Kashibai. These entries were on the basis of a Gift Deed dated 13th March 1937. Such composite entry has been interfered with and in the year 1990 at the instance of heirs of Kashibai. On 13th September 1990 Mutation Entry No.6922 came to be certified by Tahsildar.

6. While it is true that the certification was challenged in appeal and which was delayed but the same was rejected on merits as well. That order was again confirmed by the SDO.. The Commissioner has adverted to all materials and has faulted the exercise of Tahsildar as it ignored a fundamental and vital aspect of the matter. The same goes to the root of the exercise of his power. He has after adverting to them observed that the order passed by the Tahsildar on 9th August 1990 and the further direction certifying Mutation Entry on 13th

September 1990 being an exercise undertaken after a period of 53 years was ab initio, null and void.

7. In the light of the above findings of the Additional Commissioner it is not possible to accede to the submissions of Shri Dani that the Commissioner has interfered with pure findings of fact in exercise of his revisional jurisdiction. He has interfered in revisional jurisdiction to correct a fundamental error and injustice caused thereby and in that light, has consistent with the provisions of Maharashtra Land Revenue Code, set aside the orders challenged before him.

8. There is one more reason as to why it is not necessary to interfere in writ jurisdiction. The orders passed by the Additional Commissioner and those of the authorities below him are during the course of certification of Mutation Entries. Such orders do not decide questions of title and can never prevent parties like the petitioner from approaching a competent Civil Court to assert their right, title and interest in the immovable property in question. The competent Civil Court on the basis of materials produced can always render a finding uninfluenced by the

observations of the authorities certifying the Mutation Entries.

9. For all these reasons this is not a fit case to interfere in writ jurisdiction. Petition dismissed.

10. However, an ad-interim order is operating in this case from 5th August 2004. That ad-interim order in terms of prayer clause (c) of this petition would continue to operate for a period of eight weeks to enable the petitioner to file a suit and to apply for appropriate interim reliefs therein.

(S.C.DHARMADHIKARI, J.)